

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

October 10, 2000

IN RE:

**ALL TELEPHONE COMPANIES TARIFF
FILINGS REGARDING RECLASSIFICATION
OF PAY TELEPHONE SERVICE AS REQUIRED
BY FEDERAL COMMUNICATIONS COMMISSION
(FCC) DOCKET 96-128**

**DOCKET NO.
97-00409**

**ORDER REFLECTING RULINGS RENDERED DURING
OCTOBER 10, 2000 PRE-HEARING CONFERENCE**

This matter came before the Pre-Hearing Officer during a Pre-Hearing Conference held on October 10, 2000. The issues discussed during the Pre-Hearing Conference included the *Motion to Compel* filed by the Tennessee Payphone Owners Association ("TPOA") on October 5, 2000, the need for a live hearing, and the order of argument.

Background

On September 22, 2000, the TPOA served eleven (11) supplemental discovery requests on BellSouth Telecommunications, Inc. ("BellSouth"). The first request stated:

Refer to page A.1.10 (bates stamp 000028) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" [to] be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet A.1.10 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be

clear, [TPOA] is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

Requests numbered two (2) through ten (10) are nearly identical. The only relevant change is the referenced page of Exhibit DDC-1.¹ The TPOA's final request simply asked that BellSouth define "reasonable overhead."

BellSouth filed its responses on September 29, 2000. In response to the first ten (10) of the eleven (11) requests, BellSouth stated:

The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

The TPOA filed its *Motion to Compel* on October 5, 2000. The TPOA argued that BellSouth's response is not a "recognizable excuse for the failure to respond to a relevant, non-burdensome, discovery request." In addition, the TPOA contended that the information is necessary to enable it to apply the guidelines set forth by the Federal Communications Commission Common Carrier Bureau in *Wisconsin Public Service Commission*, CCB/CPD No. 00-1, 15 FCC Rcd. 9978 (March 2, 2000) (Order Directing Filings). BellSouth filed its response on October 9, 2000. BellSouth argued that it does not have a duty or obligation to create documents, it answered the questions asked, and the Wisconsin Order is not controlling.

Pre-Hearing Conference

The Pre-Hearing Conference was scheduled pursuant to an Order filed on July 21, 2000 and Notice to the parties sent on October 5, 2000. On October 10, 2000, the Pre-Hearing Officer

convened the Pre-Hearing Conference. The Pre-Hearing Officer first asked the parties whether any of the parties had reached a settlement. The parties explained that negotiations were ongoing.

TPOA's Motion to Compel

Next, the Pre-Hearing Officer asked for comments on the TPOA's *Motion to Compel*. The TPOA argued that the discovery requests at issue were not requests for the production of documents, but were requests for information. BellSouth contended that the Pre-Hearing Officer should deny the motion consistent with the September 11, 2000 Order. *See Order Granting In Part and Denying In Part Motion to Compel and to Modify Scheduling Order*, p. 4 (September 11, 2000).

Based on the filings and comments of the parties, the Pre-Hearing Officer finds that BellSouth should not be compelled to provide the TPOA with the TELRIC study as requested by the TPOA in requests one (1) through ten (10) subsection (c). As explained in the Order entered by the Pre-Hearing Officer on September 11, 2000, neither the Pre-Hearing Officer nor the Authority has determined which methodology should be used to set pay telephone rates. Because a methodology has not been determined, BellSouth had the option of choosing a methodology and should not be forced to provide a cost study based on the methodology chosen by the TPOA. Nevertheless, although BellSouth should not be compelled to produce a TELRIC cost study, BellSouth should provide all data necessary for the TPOA to develop an alternative cost study or argument in opposition to BellSouth's position.

¹ Request two (2) through ten (10) pertain to the following pages: C.1.1 (bates stamp 000032); C.1.2 (bates stamp 000038); C.2.1 (bates stamp 000044); C.2.2 (bates stamp 000050); D.1.1 (bates stamp 000056); D.1.2 (bates stamp 000063); S.1.1 (bates stamp 000067); S.1.2 (bates stamp 000071); and S.1.3 (bates stamp 000076).

For the foregoing reasons, the Pre-Hearing Officer finds that BellSouth respond to requests two (2) through ten (10) subsections (a) and (b). In addition, BellSouth should provide the TPOA with the TELRIC Calculator used by BellSouth in completing its TSLRIC study and as described in its response as a “tool” used to perform the TSLRIC study. BellSouth is not, however, required to provide the TELRIC worksheets as adjusted by the TPOA.

Conduct of the Hearing

During the Conference, the Pre-Hearing Officer asked whether the parties could agree to a paper hearing. All parties agreed to a paper hearing, but some represented that they would like the opportunity to present oral arguments or to file post-hearing briefs.

The Pre-Hearing Officer finds that the parties have agreed to a paper hearing. The parties shall have the opportunity to present oral argument in lieu of filing post-hearing briefs. Oral arguments shall be presented before the Directors of the Authority beginning at 9:00 a.m. on Wednesday, October 25, 2000. Each party shall be given twenty (20) minutes to present oral argument. The parties have no objection to the Authority issuing any data requests it deems necessary following the presentation of oral arguments. In order to resolve all preliminary matters prior to beginning oral arguments, the parties shall file any motions no later than **Friday, October 20, 2000 at 2:00 p.m.**, and the Pre-Hearing Officer will convene a Pre-Hearing Conference immediately following the regularly scheduled Authority Conference on **Tuesday, October 24, 2000** to dispose of pending motions and discuss any settlement agreements.

IT IS THEREFORE ORDERED THAT:

- 1) The Tennessee Payphone Owners Association's *Motion to Compel* is granted in part and denied in part as set forth in this Order.

2) BellSouth Telecommunications, Inc. shall provide the information as described in this order no later than **Friday, October 13, 2000 at 2:00 p.m.**

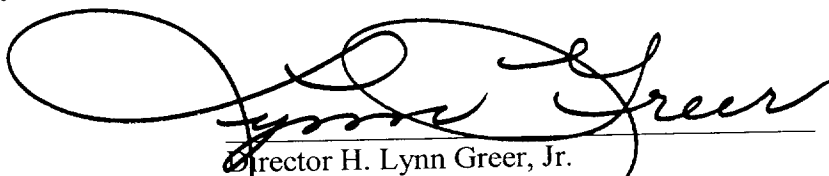
3) Supplemental rebuttal testimony shall be limited to the October 13th production of BellSouth Telecommunications, Inc. and shall be filed no later than **Friday, October 20, 2000 at 2:00 p.m.**

4) Any motions shall be filed no later than **Friday, October 20, 2000 at 2:00 p.m.**

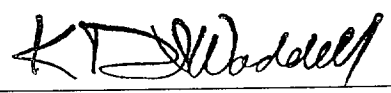
5) A Pre-Hearing Conference is scheduled for **Tuesday, October 24, 2000** immediately following the regularly scheduled Authority Conference.

6) Oral arguments shall be presented before the Authority beginning on **Wednesday, October 25, 2000 at 9:00 a.m.** The order of presentation shall be BellSouth Telecommunications, Inc.; Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State; United-Telephone Southeast, Inc.; Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter; and the Tennessee Payphone Owners Association.

7) Any party aggrieved by this Order may file a Petition for Reconsideration pursuant to Tenn. Code Ann. § 4-5-317 to be considered by the Pre-Hearing Officer within fifteen (15) days of the entry of this Order.


Director H. Lynn Greer, Jr.
Pre-Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary